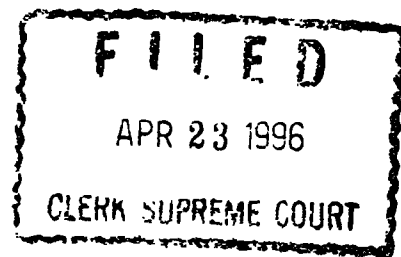


IN THE COURT OF APPEALS OF IOWA

No. 5-469 / 94-1160



**IN RE THE MARRIAGE OF NANCY D. BICKEL AND
WILLIAM THOMAS BICKEL**

Upon the Petition of
NANCY D. BICKEL,

Appellant,

And Concerning
WILLIAM THOMAS BICKEL,

Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Nancy Bickel appeals the district court's modification of the alimony provision
of the parties' dissolution decree. **AFFIRMED.**

Ryan A. Genest, Pleasant Hill, for appellant.

Mark C. Smith, West Des Moines, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

This case involves William Bickel's application to modify the parties' dissolution decree to eliminate his alimony obligation. The district court found there had been a substantial change in circumstances and reduced the amount and duration of alimony awarded. Nancy now appeals. We affirm.

Nancy and William Bickel were married in 1962. They have four children, all of whom are adults. The parties were divorced on October 28, 1992. At that time Nancy was unemployed. William operated a car repair business. This business earned profits of \$32,000 in 1989, and \$18,000 in 1990.

Nancy was awarded the marital residence, which included the property where William had formerly conducted his business. William was awarded his business assets. William and the parties' son, Scott, decided to open the business at a new location. The court noted William had polio as a child, and this caused him continuing health problems. The court concluded, however, that with his experience in the automotive field, William should be able to provide for his own support and be able to pay Nancy alimony of \$500 per month for ten years.

William filed an application for modification on February 18, 1993, seeking to reduce his alimony obligation. He claimed his health was deteriorating and this prevented him from working full-time. The district court dismissed his application, finding William had failed to show a substantial change in circumstances. The ruling

provided the only possible change in circumstances was the possibility William might be qualified for social security disability benefits, but this had not yet been established.

On December 14, 1993, William filed a new application for modification. The parties stipulated the issues to be tried in the modification proceeding were whether there had been a material and substantial change in circumstances since the date of the last order and whether such change warranted a modification in the terms of alimony ordered in the decree.

In December 1993 the Social Security Administration determined William was totally disabled. William's prior bout with polio caused atrophy of his legs. His condition has now deteriorated so that weakness in his legs prevents him from walking more than a few feet. In addition, William suffers from arthritis in his knees, which further limits his ability to ambulate. His annual income from social security disability benefits is about \$9700, and he has net monthly income of \$773.

William has turned his automotive repair business over to Scott, and no longer works there. Scott borrowed about \$20,000 from William, and has been paying him back when he is able. William remarried in April 1993. He lives in a home owned by his current wife, and he has no housing expense.

Nancy is employed at McDonald's, where she has annual income of about \$10,700. She also rents an apartment in her home and has two boarders, which gives her annual rental income of \$7,200. Nancy has total annual income of \$17,900 and net

monthly income of \$1,068. Her monthly expenses include a mortgage payment of \$253 and \$40 for prescription medicine.

The district court concluded William's total permanent disability is a material and substantial change in circumstances which was not anticipated at the time of the original decree or at the time of the ruling on the prior modification application. The court determined William's alimony obligation should be reduced to \$250 per month, effective July 1, 1994, and to continue until October 1, 1997. Nancy has appealed the modification of the parties' dissolution decree.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

A party who seeks a modification of a dissolution decree must establish by a preponderance of the evidence that there has been a substantial change in circumstances since the entry of the decree or its last modification. *In re Marriage of Jacobo*, 526 N.W.2d 859, 864 (Iowa 1995). The trial court has reasonable discretion in determining whether **modification** is warranted, and that discretion will not be disturbed on appeal unless there is a failure to do equity. *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987).

Nancy claims William failed to show a substantial change in circumstances. She states William's health problems were known at the time of the original dissolution decree, and the decree recognized his future income would not be what it was during the marriage. She also asserts that William voluntarily reduced his ability to pay alimony by lending money to Scott.

Under Iowa Code section 598.21(8)(e), one of the factors a court may consider in determining whether there has been a substantial change in circumstances is a change in the physical, mental, or emotional health of a party. This code section evinces a continuing intent by the legislature to provide financial security to a party when an unexpected calamity occurs. *In re Marriage of Cooper*, 524 N.W.2d 204, 206 (Iowa App. 1994) (citing *In re Marriage of Marshall*, 394 N.W.2d 392, 396 (Iowa 1986)).

We agree with the district court that William's disability is a material and substantial change in circumstances. Although William previously had health problems, he was able to work. The evidence shows William's health has now deteriorated to the point where he has difficulty walking more than a few feet, and he is no longer able to work. The extent of William's current health problems is a change in circumstances which was not contemplated by the court at the time the alimony award was made. The Social Security Administration determined William is totally disabled.

We also agree with the district court's conclusion that William's alimony obligation should be reduced. Nancy's financial condition has improved because she is employed and has increased her rental income. William's financial condition has diminished because he is no longer able to earn a living, but must rely on social security disability benefits. We find William has not voluntarily reduced his ability to pay alimony by loaning money to Scott.

After considering all issues raised in this appeal, we affirm the decision of the district court. Costs of this appeal are assessed to Nancy Bickel.

AFFIRMED.